PV 9054C89

JORDAN RIVER
FLOW MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 6th day of April, 1989, by and among the U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE (hereinafter "U.S. Government"); the STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES (hereinafter "State"); and SALT LAKE COUNTY (hereinafter "County").

WITNESSETH:

WHEREAS, the State has jurisdiction over water distribution to satisfy water rights on the Jordan River and the Surplus Canal and over the operation of the Farmington Bay Waterfowl Management area; and,

WHEREAS, the Little Dell Lake Project, when completed, will store runoff flows during spring snowmelt months, which flows would otherwise continue down Parleys Creek to the Jordan River and into the marsh areas of Farmington Bay; and,

WHEREAS, the parties desire to mitigate the effects of the Little Dell Lake Project on the downstream environment of the Jordan River and Farmington Bay; and,

WHEREAS, the State has appointed a Lower Jordan River Commissioner (hereinafter "Commissioner") to distribute the

flows of the Lower Jordan River according to the water rights; and,

WHEREAS, the County maintains flood control structures in the channels of the Jordan River and the Surplus Canal at their point of bifurcation near 2100 South Street in Salt Lake County, pursuant to an agreement with the U.S. Army Corps of Engineers for the operation and maintenance of the Jordan River Project; and,

WHEREAS, the flood control structures in the channels of the Jordan River and the Surplus Canal are operated by the County and the Commissioner to serve two purposes, namely, the County operates the structures to divert excess flows from the Jordan River into the Surplus Canal during flood periods and the Commissioner operates the structures to divide flows to satisfy water rights; and,

WHEREAS, the Operation and Maintenance criteria established by the Corps of Engineers for the Jordan River Project provides that said flood control structures should be operated "...in such a manner as to prevent flows in the Jordan River below the bifurcation from exceeding 300 cubic feet per second [hereinafter "cfs"] which is estimated to be the capacity of the river below this point." (See Exhibit A, attached hereto); and,

WHEREAS, the gates located in the Jordan River at 2100 South are currently operated to satisfy water rights in the Jordan River and the Surplus Canal and to prevent the

downstream flows in the Jordan River from exceeding 300 cfs, and excess flows, if any, are diverted into the Surplus Canal; and,

WHEREAS, other flows from the south originating in Utah Lake, Little Cottonwood Creek, Big Cottonwood Creek, and Mill Creek at times may exceed the water rights on the Jordan River and the Surplus Canal north of 2100 South; and,

WHEREAS, during the period of time that the flows in Parleys Creek are being captured by the Little Dell Lake Project the gates at 2100 South could be operated to divert additional water into the Jordan River from any available excess flows entering the Jordan above 2100 South up to a maximum of 300 cfs; and,

WHEREAS, in order to mitigate the effects of the Little Dell Lake Project on the downstream environment of the Jordan River and Farmington Bay, the County desires to have the flood control structures mentioned above operated in a manner which will divert excess flows into Farmington Bay at any time (1) the flow in the Jordan River upstream of 2100 South is sufficient to satisfy all existing water rights in the Jordan River and the Surplus Canal below that point and (2) the flow of the lower Jordan River is less than 300 cfs.

NOW, THEREFORE, in consideration for the mutual promises set forth herein, the parties agree as follows:

1. As a mitigation measure, all excess flows will be diverted into the Jordan River at the 2100 South flood control

structures subject to the following two restrictions: (1) no diversion will be made which would interfere with satisfying any existing water right recognized by the State of Utah on either the Jordan River or the Surplus Canal, (2) no diversion will be made which would exceed the 300 cfs limitation on the capacity of the Jordan River as established by the Operation and Maintenance criteria for the Jordan River Project, and (3) no diversion will be made during periods of threatening or actual rainstorms or that results in flooding of public or private property during dry weather.

2. It is understood and agreed by all parties that the diversion of excess water into the Lower Jordan River under this agreement is contingent upon the presence and availability of excess flows in the upper Jordan River drainage which exceed the water rights on the lower Jordan River and the Surplus Canal north of the 2100 South flood control structures.

3. It is understood that County personnel will operate the flood control structures mentioned above when the flow of the Jordan River at 2100 South is above 600cfs. When the flow of the Jordan River is at 600 cfs or below, the structures in the river at 2100 South will be operated by the Commissioner.

4. It is understood and agreed by the parties that the County's performance under this agreement will take place within the existing flood control operations and maintenance program, and that nothing in this agreement shall be construed as authorizing the County to manage or distribute the waters of the Jordan River or its tributaries; such power resting with the State, acting through its appointed river commissioners.

The mitigation flows will be reduced immediately upon notice from the Commissioner that excess flows are not present and available. Nothing in this agreement shall be construed as a waiver or limitation of the State or County's immunity under the provisions of the Utah Governmental Immunity Act, Section 63-30-1, et seq., U.C.A., for the management of flood waters and the operation of flood and storm systems. It is further understood and agreed by the parties that the County will make its best efforts to provide the desired mitigation flows, pursuant to the terms of this agreement, but that the County cannot guarantee the availability of any particular excess flows in the Jordan River and shall not be held liable therefor.

5. Nothing in this agreement shall be construed as modifying, superceding or expanding any existing rights to store waters as part of the Little Dell Project.

6. This agreement constitutes the entire agreement between the parties, and no other promises or understandings, Oxpress or implied, shall be binding upon the parties. No amendment or modification to this agreement shall be effective unless made in writing and signed by the parties.

7. This agreement shall be for a period of twenty (20) years and may be renewed and/or modified and renewed in writing for additional twenty (20) year terms as long as mitigation for impacts of the Little Dell Lake Project is required.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

SALT LAKE COUNTY

By Richard L. Chamberlain 4/7/89
Richard L. Chamberlain,
Purchasing Agent

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE

By Robert G. Bressink
Title Acting Field Supervisor

STATE OF UTAH, DEPARTMENT OF
NATURAL RESOURCES

By Lee C. Hansen
Title Exec. Director

APPROVED AS TO FORM
Salt Lake County Attorney's Office
By J. Thorpe
Deputy County Attorney
Date 5.7.89
18

Toshiharu Kano
TOSHIHARU KANO, Director
Flood Control and Highway Divisions

Romney M. Stewart
ROMNEY M. STEWART, Director
Flood Control and Highway Divisions

EXHIBIT A

(4) Control Structure. The control structures in Jordan River and Surplus Canal near 21st South Street has two functions, viz., to divert excess flows into the canal in flood periods, and to divide flows to satisfy water rights. The control structure at the head of Surplus Canal has a flashboard controlled concrete ogee section. The structure is 85 feet wide and 30 feet long. The ogee section has an elevation of 4,224 feet. Eleven flashboard bays have been spaced on 7-foot centers on the crest of the ogee section in order to accomodate the installation of flashboards to elevation 4,227.5. The control structure across the Jordan River was constructed with five 48" outlets through it, each controlled by a manually operated metal slide gate at the upstream end. During low stages of the river, the diversion structures are to be operated to divide the flow as required to satisfy downstream water requirements. During the flood season between 1 November and 1 June, all flashboards are to be removed and the slide gates open. At such time when the water surfaces reaches elevation 4,227, the slide gates should be closed in such a manner as to prevent flows in the Jordan River below the bifurcation from exceeding 300 cubic feet per second which is estimated to be the capacity of the river below this point.

(5) Gates at Head of Goggin Drain. During the flood season between 1 November and 1 June, the gates at the head of Goggin Drain should normally be kept in an open position. If the gage on the Surplus Canal, as referred to in paragraph 1-06 of this manual, reaches or exceeds a reading of 8.5 or if flow in the channel reaches or exceeds 2,000 c.f.s., as rated by the U.S.G.S., the gates at the head of Goggin Drain should be opened in order that Goggin Drain may carry its full capacity.

b. Inspection and Maintenance.

(1) Pertinent Requirements of the Code of Federal Regulations. Flood Control Regulations, paragraph 208.10 (h)(1) are quoted in part as follows:

"(h) Miscellaneous Facilities (1) Maintenance. Miscellaneous structures and facilities constructed as a part of the protective works and other